

**\*CORRECTED COPY**



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation on **April 29, 2004**

**NOTICE OF ACTION TAKEN -- DOCKET OST-2004-16945**

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\_\_\_\_\_ This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Joint Application of **AMERICAN AIRLINES, INC. (AMERICAN) and COMPANIA MEXICANA DE AVIACION, S.A. DE C.V. (MEXICANA)**,<sup>1</sup> filed **1/27/04**, and amended on **3/16/04**, and supplemented on **4/1/04**,<sup>2</sup> for:

**Code-Share Authorization for American:**

American and its affiliates request a statement of authorization, and Mexicana and its affiliate request any necessary underlying exemption authority (including the right to integrate such authority with their existing foreign air carrier permits and exemptions), in order for American and its affiliates to display the "MX\*" designator code in conjunction with foreign air transportation of persons, property, and mail on flights operated by American (or its affiliates) (1) between points in the United States, (2) between points in the United States and points in Mexico, and (3) between points in the United States and points in third countries (either nonstop or via intermediate points in third countries).

**Code-Share Authorization for Mexicana:**

Mexicana and its affiliate request a statement of authorization, and American and its affiliates request any necessary underlying exemption authority (including the right to integrate such authority with their existing certificates and exemptions), in order for Mexicana and its affiliate to display the "AA\*" designator code in conjunction with foreign air transportation of persons, property, and mail on flights operated by Mexicana (or its affiliate) (1) between points in Mexico, (2) between points in Mexico and points in the United States, and (3) between points in Mexico and points in third countries (either nonstop or via intermediate points in third countries).

The code-share partners provide a listing of specific code-share routes that they intend, initially, to serve under this arrangement (see attachments).

**Responsive Pleadings:**

ATA Airlines, Inc. (ATA), filed an answer to the application, opposing grant of the Chicago-Mexico City portion of the request on the basis of competition concerns. Mexicana and American filed a joint reply to ATA's answer to which ATA filed a surreply. Mexicana and American filed a joint response to ATA's surreply.<sup>3</sup> We address this matter in the Remarks Section below. No other party filed in connection with the captioned application.

<sup>1</sup> Specifically, the joint applicants in this application are as follows: American (and its affiliates TWA Airlines LLC, American Eagle Airlines, Inc., Executive Airlines, Inc., d/b/a American Eagle), and

Mexicana (and its affiliate Aerovias Caribe, S.A. de C.V. d/b/a Aerocaribe (Aerocaribe)).

<sup>2</sup> The supplement contained information that had been redacted from the copy of the code-share agreement that the joint applicants had previously submitted with their application. The supplement was accompanied by a joint motion for confidential treatment. We issued a notice governing access to this material on April 8, 2004, in the present docket. We will handle the merits of the motion on confidentiality separately.

<sup>3</sup> ATA's surreply and the joint response of Mexicana/American were accompanied with motions for leave to file an otherwise unauthorized document. We will grant the motions.

**\* This Notice of Action Taken has been corrected to reflect two foreign points that were inadvertently omitted from the attachment, at page 5 (Santiago, Chile, and Kingston, Jamaica).**

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Applicant reps: Carl B. Nelson, Jr. (AA) (202) 496-5647 and Charles F. Donley II (MX) (202) 626-6840  
DOT Analyst: Linda L. Lundell (202) 366-2336

## DISPOSITION<sup>4</sup>

1. We grant exemption authority to American and its affiliates, to the extent necessary, to provide scheduled foreign air transportation of persons, property, and mail between points in the United States and points within Mexico beyond American's authorized Mexican gateway points for transborder services, for the purpose of blind-sector code-sharing services operated between the Mexican gateway points and other points within Mexico on services operated by Mexicana or its affiliate, Aerocaribe;

2. We grant exemption authority to Mexicana and its affiliate, Aerocaribe, to the extent necessary, to provide scheduled foreign air transportation of persons, property, and mail between points in Mexico and points in the United States beyond Mexicana/Aerocaribe's authorized U.S. gateway points for transborder services, for the purpose of blind-sector code-sharing services operated between the U.S. gateway points and other points within the United States on services operated by American or its affiliates;

3. We grant to American and its affiliates a statement of authorization under Part 212 of the Department's regulations to display the airline designator code of Mexicana and its affiliate, Aerocaribe, on all flights operated by American and its affiliates within the United States beyond Mexicana/Aerocaribe's authorized United States gateways for the carriage of Mexicana/Aerocaribe's authorized Mexico-U.S. traffic;

4. We grant to Mexicana and its affiliate, Aerocaribe, a statement of authorization under Part 212 of the Department's regulations to display the airline designator code of American and its affiliates on all flights operated by Mexicana and its affiliate, Aerocaribe, within Mexico beyond American's (and its affiliates') authorized Mexican gateways for the carriage of American/its affiliates' authorized U.S.-Mexico traffic;

5. We grant exemption authority to American and its affiliates, to the extent necessary, to provide scheduled foreign air transportation of persons, property, and mail between the following city-pair markets: Chicago-Durango/Guadalajara/Morelia/Zacatecas, Denver-Mexico City, Los Angeles-Guadalajara/Mexico City/Cancun/Leon/Zacatecas/Morelia, Oakland-Guadalajara/Leon/Zacatecas, Portland-Guadalajara, New York/Newark-Mexico City, Las Vegas-Guadalajara/Mexico City, San Antonio-Guadalajara/Mexico City, San Francisco-Guadalajara/Mexico City/Morelia, and San Jose-Guadalajara/Morelia, Sacramento-Guadalajara, including route integration authority to combine this exemption with all existing certificate and exemption authority held by American and its affiliates;<sup>5</sup>

6. We grant to Mexicana and its affiliate, Aerocaribe, a statement of authorization under Part 212

of the Department's regulations to display the airline code of American and its affiliates on all flights operated by Mexicana and its affiliate, Aerocaribe, in the following transborder markets for the carriage of American/affiliates' authorized traffic: Chicago-Durango/Guadalajara/Morelia/Zacatecas, Denver-Mexico City, Los Angeles-Guadalajara/Mexico City/Cancun/Leon/Zacatecas/Morelia, Oakland-Guadalajara/Leon/Zacatecas, Portland-Guadalajara, New York/Newark-Mexico City, Las Vegas-Guadalajara/Mexico City, San Antonio-Guadalajara/Mexico City, San Francisco-Guadalajara/Mexico City/Morelia, and San Jose-Guadalajara/Morelia, Sacramento-Guadalajara, along with all U.S.-Mexico transborder routes listed in the Attachment, page 2;

<sup>4</sup> Authority granted by this notice is subject to the conditions outlined below, see also remarks, below.

<sup>5</sup> In the joint application filed, the parties included a statement requesting "any necessary exemption authority" to conduct the code-share services proposed. In Exhibit A, page 4, the applicants provided a listing of specific transborder exemption authority needed for Mexicana/Aerocaribe to conduct the services proposed. While no specific listing was provided for American and its affiliates, after review of the application, we determined that American (and its affiliates), needed the exemption authority outlined here.

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7. We grant exemption authority to Mexicana and its affiliate, Aerocaribe, to the extent necessary, to provide scheduled foreign air transportation of persons, property, and mail between the following city-pair markets: Boston-Cancun, Dallas/Ft. Worth-Aguascalientes, Dallas/Ft. Worth-Leon, and St. Louis-Cancun, including route integration authority to combine this exemption with all existing foreign air carrier permit and exemption authority held by Mexicana and its affiliate, Aerocaribe;

8. We grant to American and its affiliates a statement of authorization under Part 212 of the Department's regulations to display the airline code of Mexicana and its affiliate, Aerocaribe, on all flights operated by American and its affiliates in the following transborder markets for the carriage of Mexicana/Aerocaribe's authorized traffic: Boston-Cancun, Dallas/Ft. Worth-Aguascalientes, Dallas/Ft. Worth-Leon, and St. Louis-Cancun, along with all U.S.-Mexico transborder routes listed in the Attachment, page 1;

9. We grant to American and its affiliates, to the extent necessary, a statement of authorization under Part 212 of the Department's regulations to display the airline code of Mexicana and its affiliate, Aerocaribe, on all flights operated by American and its affiliates between Mexicana/Aerocaribe's authorized U.S. gateways and beyond to points in third countries (either nonstop or via intermediate points in third countries for the carriage of Mexicana/Aerocaribe's authorized beyond-U.S. traffic on a blind-sector basis);

10. We grant, *sua sponte*, to the extent necessary, special authorization to Mexicana and its affiliate, Aerocaribe, under Part 216 of the Department's regulations to provide the blind-sector service proposed between Mexicana/Aerocaribe's authorized U.S. gateways and beyond to points in third countries (either nonstop or via intermediate points in third countries for the carriage of Mexicana/Aerocaribe's authorized Mexico-U.S. traffic in combination with Mexico-third country traffic (no local traffic rights between the United States and third countries));

11. The exemption authority granted to American and its affiliates is effective immediately for a period of two years from the date of this notice, subject to the conditions outlined below;

12. The exemption authority and special authorization granted to Mexicana and its affiliate, Aerocaribe, is effective immediately for a period of one year from the date of this notice, subject to the conditions outlined below;

13. We dismiss the request for longer-term exemption authority for Mexicana and Aerocaribe (see remarks, below);

14. The statements of authorization granted, above, are effective immediately and shall remain in effect indefinitely, subject to the conditions outlined below;

15. All of the exemption authority granted by this Notice is limited to operations conducted on a code-share basis only; and

16. The U.S.-Mexico transborder exemption authority granted to American and its affiliates is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2.

**Action taken by: Karan K. Bhatia**  
**Assistant Secretary for Aviation**  
**And International Affairs**

XX The authority granted is consistent with the aviation agreement, comity and reciprocity, and/or the overall aviation relationship between the United States and the foreign countries involved.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX **American and its affiliates' certificates of public convenience and necessity**

XX **Mexicana and Aerocaribe's foreign air carrier permits**

XX **Standard Exemption Conditions (attached)**

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**Additional Conditions:**

The route integration authority granted is subject to the following conditions:

The applicants are subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved.

Furthermore, (a) nothing in the award of the route integration authority granted should be construed as conferring upon the applicants rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the applicant(s) notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights); (b) should there be a request by any carrier to use the limited-entry route rights that are included in the applicants' authority by virtue of the route integration exemption granted here, but that are not then being used by the applicants, the holding of such authority by route integration will not be considered as providing any preference for the applicants in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

The code-share operations authorized are subject to the following conditions:

- (a) The respective statements of authorizations will remain in effect only as long as (i) the subject U.S. carriers and the subject Mexican-flag carriers continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share and/or alliance agreement providing for the code-share operations remains in effect;
- (b) The subject U.S. carriers and/or the subject Mexican-flag carriers must notify the Department (Office of International Aviation, Room 6412), by letter, no later than 30 days before they begin any new beyond gateway code-share service under the blanket beyond-gateway code-share services authorized by this action. Such notice shall identify

- the market(s) to be served, which carrier will be operating the aircraft in the code-share market added, and the date on which the service will begin. Such notices must be filed in Docket OST-2004-16945;
- (c) The subject U.S. carriers and/or the subject Mexican-flag carriers must promptly notify the Department (Office of International Aviation) if the code-share agreement is no longer effective or if the carriers decide to cease operating all or a portion of the approved code-share services. (Such notice should be filed in Docket OST-2004-16945);
  - (d) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendment to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected; and the operating carrier shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition;
  - (e) The carriers will comply with section 4.4 of the code-share agreement as amended March 16, 2004, which was submitted to the Department on that date; and
- 6 We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

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- (f) The authority granted here is specifically conditioned so that neither the subject U.S. carriers nor the subject Mexican-flag carriers shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

### **Remarks:**

#### **Responsive Pleadings**

In its answer, ATA states that its sole concern is with the Chicago-Mexico City market, which it states is one of the more economically significant U.S.-Mexico markets and a market into which ATA has been seeking entry for the past several years. ATA argues that the Chicago-Mexico City market represents the classic hub-to-hub nonstop overlap market and that both the Department of Transportation and the Department of Justice have recognized that extensive hub-to-hub codesharing in overlapping markets presents a serious threat to competition and that the Department of Justice has made clear its opposition to codesharing proposals with hub-to-hub overlaps. ATA maintains that, while American and Mexicana describe the proposed code-share as a replacement of Mexicana's arrangement with United, which terminated March 31, 2004, there is an important difference. ATA states that the proposed American/MX code-share will create a far more dominant aligned carrier grouping in the Chicago-Mexico City market than any proposed or existing code-sharing group. ATA argues that, at the same time, longstanding designation limitations imposed by the U.S.-Mexico bilateral agreement preclude ATA or other carriers from offering a competitive response. ATA urges that the Department seek approval from the Mexican Government for a third designation opportunity in the Chicago-Mexico City

market. ATA states that, if such approval is not obtained, the Department should exclude approval of the Chicago-Mexico City portion of the instant request until such time as the Mexican Government authorizes additional U.S. carrier entry.

Mexicana and American filed a joint reply to ATA's answer, stating that ATA's objection should be denied and the joint application of Mexicana and American approved without delay or restriction. Mexicana/American argue that extra-bilateral issues are not appropriate for resolution in licensing cases and that the Department has denied similar objections, concluding that such U.S. carrier concerns could be addressed more appropriately through diplomatic channels and bilateral discussions aimed at increasing commercial opportunities generally, rather than for only two specific carriers. Mexicana and American state that, under no circumstance, should the Department seek unilaterally to coerce amendment of the bilateral while denying Mexicana and American operating rights already agreed to by both countries, contained in the bilateral, and awarded to other competing carriers and alliances.

In its surreply, ATA argues that the joint applicants have disregarded the principal issue in the case, *i.e.*, the unacceptable level of dominance in the critical Chicago-Mexico City market that would exist if the application were approved and the total lack of new entry as a competitive check on their prospective behavior. It also reiterates its request that the Department undertake consultations to seek a third designation between Chicago and Mexico City or an understanding that Midway would be treated as a point separate from Chicago O'Hare.

7 Under the U.S.-Mexico aviation agreement, only two U.S. carriers may be designated to provide direct-carrier (own aircraft) service in a given city-pair market. American and United Air Lines (United) currently hold the available designations for service in the Chicago-Mexico City market, and both carriers operate direct-carrier services in the market. Under the agreement, up to four U.S. carriers may offer code-share services on a given city-pair route. Currently, there are two authorized code-share operations in the Chicago-Mexico City market: Delta Air Lines with Aerovias de Mexico and United with USAirways. United was also previously authorized to code-share with Mexicana in the Chicago-Mexico City market, but the United-Mexicana code-share arrangement ceased March 31, 2004.

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In its response to ATA's surreply, Mexicana and American state that ATA's repeated claims that American and Mexicana would dominate the Chicago-Mexico City market is without basis, includes gross misstatements of American's and United's services, and omits Chicago-Mexico City service

operated by US Airways and Air Canada. Mexicana and American maintain that the American/Mexicana arrangement precisely replicates the United/Mexicana arrangement that the Department unconditionally approved in 1997—both American and United operate one daily nonstop, and Mexicana operates three daily nonstops, and competitive daily nonstop service is operated by Aeromexico.

#### Decision on Chicago-Mexico City

ATA would have us withhold the award of valuable operating authority currently available under the U.S.-Mexico bilateral agreement and that could immediately provide benefits to the traveling public, benefits all the more important in light of the recent ending of the United/Mexicana U.S.-Mexico code-share arrangement. Furthermore, ATA would have us continue to withhold this authority until the completion of efforts to secure additional rights that ATA seeks to use at Chicago. We shall not adopt ATA's suggested approach. It is not our policy to allow valuable operating rights to go unused, particularly when another carrier is interested in using those rights and is in a position to do so and has firm plans to do so, as is the case with the joint applicants

here. Against this background, and in the circumstances presented, we conclude that it is consistent with the public interest to award the Chicago-Mexico City authority requested. American and Mexicana have also requested only code-share authority, not antitrust immunity, and their implementation of their code-share arrangement will be fully subject to the antitrust laws. Moreover, as revised by the applicants, section 4.4 of their code-share agreement should provide significant assurance that each of the two carriers will independently set its own fares in markets served by both partners,<sup>8</sup> given that we must take into account the rights created by the U.S.-Mexico bilateral agreement.

With regard to the matter of competition, we note that consumers will still have a number of carriers to choose from in this market. Specifically, although the United/Mexicana code-share arrangement has been terminated, United continues to provide nonstop transborder service in the Chicago-Mexico City market with its own aircraft, and US Airways provides nonstop transborder service in the market pursuant to a code-share arrangement with United. In addition, Delta Air Lines provides nonstop transborder service in the market pursuant to a code-share arrangement with Aeromexico. This being said, we would certainly favor the enhanced competition that would result from additional U.S. carrier authority beyond the current limits in the U.S.-Mexico bilateral agreement, and indeed have worked to achieve this end. However, we have as yet been unsuccessful in our attempts to obtain approval for additional designations in the U.S.-Mexico markets.<sup>9</sup>

#### Miscellaneous

##### Term of Authority

In the captioned application, the carriers' request, among other things, that Mexicana and Aerocaribe be granted exemption authority for a two-year term. Consistent with our standard policy for licensing Mexican-flag carriers, we have granted the subject exemption authority for a one-year period, and have dismissed the request for longer-term authority.

<sup>8</sup> We are unpersuaded by ATA's assertion that this arrangement is somehow anticompetitive. In this regard, we note that while ATA cited the Department of Justice in support of its position, that Department in fact reviewed the American/Mexicana application and (unlike the American Airlines-TACA case cited by ATA, Answer at 4, n.4) elected not to file any comments with us.

<sup>9</sup> See, Notices of Action Taken dated January 14, 2004, in Docket OST-2003-16529 and dated February 13, 2004, in Docket OST-2003-16444.

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On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicants qualified to provide the services authorized. We further found that (1) our action was consistent with Department policy; (2) grant of the application was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted or dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

An electronic version of this document is available on the World Wide Web at:

[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)

**U.S.-MEXICO TRANSBORDER CODE-SHARE SERVICES**

**INITIALLY PROPOSED MARKETS WHERE THE “MX” CODE WILL BE PLACED  
ON AA FLIGHTS (Both the U.S. and Mexican code-share partners already held the  
requisite underlying authority needed to conduct the services proposed):**

Chicago-Acapulco  
Chicago-Cancun  
Chicago-Mexico City  
Chicago-Puerto Vallarta  
Chicago-San Jose del Cabo  
Dallas/Ft. Worth-Acapulco  
Dallas/Ft. Worth-Cancun  
Dallas/Ft. Worth-Cozumel  
Dallas/Ft. Worth-Guadalajara  
Dallas/Ft. Worth-Ixtapa/Zihuatanejo  
Dallas/Ft. Worth-Mexico City  
Dallas/Ft. Worth-Monterrey  
Dallas/Ft. Worth-Puerto Vallarta  
Dallas/Ft. Worth-San Jose del Cabo  
Miami-Cancun  
Los Angeles-San Jose del Cabo  
New York-Cancun  
Miami-Mexico City

**INITIALLY PROPOSED MARKETS WHERE THE “MX” CODE WILL BE PLACED  
ON AA FLIGHTS (American already holds the requisite underlying authority to conduct  
the code-share services proposed. Mexicana/Aerocaribe receive new underlying authority  
by this Notice to conduct the services proposed):**

Boston-Cancun  
Dallas/Ft. Worth-Aguascalientes  
Dallas/Ft. Worth-Leon  
St. Louis-Cancun

**U.S.-MEXICO TRANSBORDER CODE-SHARE SERVICES**

**INITIALLY PROPOSED MARKETS WHERE THE “AA” CODE WILL BE PLACED  
ON MEXICANA/AEROCARIBE FLIGHTS IN THE FOLLOWING MARKETS  
(Mexicana already holds the requisite underlying authority to conduct the code-share  
services proposed. American and its affiliates receive new underlying authority by this  
Notice to conduct the services proposed):**



Chicago-Guadalajara  
Denver-Mexico City  
Los Angeles-Guadalajara  
Los Angeles-Mexico City  
Oakland-Guadalajara  
San Antonio-Guadalajara  
San Antonio-Mexico City  
San Francisco-Guadalajara  
San Francisco-Mexico City  
Chicago-Durango  
Chicago-Morelia  
Chicago-Zacatecas  
Los Angeles-Cancun  
Los Angeles-Leon  
Los Angeles-Zacatecas  
New York/Newark-Mexico City  
San Jose-Guadalajara  
Las Vegas-Guadalajara  
Las Vegas-Mexico City  
Los Angeles-Morelia  
Oakland-Leon  
San Francisco-Morelia  
Oakland-Zacatecas  
Portland-Guadalajara  
Sacramento-Guadalajara  
San Jose-Morelia

**INITIALLY PROPOSED MARKETS WHERE THE “AA” CODE WILL BE PLACED  
ON MEXICANA/AEROCARIBE FLIGHTS IN THE FOLLOWING MARKETS  
(Both the U.S. and Mexican code-share partners already held the requisite underlying  
authority needed to conduct the services proposed):**

Chicago-Mexico City  
Chicago-Monterrey  
Miami-Cancun  
Los Angeles-San Jose del Cabo  
Miami-Mexico City

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**INTRA-MEXICO CODE-SHARE SERVICES**

**INITIALLY PROPOSED MARKETS WHERE THE “AA” CODE WILL BE PLACED  
ON MEXICANA/ AEROCARIBE FLIGHTS BETWEEN AA/AA \* AUTHORIZED  
MEXICAN GATEWAYS AND:**<sup>1</sup>

Acapulco  
Cancun

Chetumal  
Ciudad del Carmen  
Cozumel  
Guadalajara  
Hermosillo  
Bahias de Huatulco  
Leon  
Manzanillo  
Mazatlan  
Merida  
Mexicali  
Mexico City  
Minatitlan  
Monterrey  
Morelia  
Nuevo Laredo  
Oaxaca  
Puerto Escondido  
Puerto Vallarta  
Saltillo  
San Jose del Cabo  
Tampico  
Tijuana  
Tuxtla  
Veracruz  
Villahermosa  
Zacatecas  
Ixtapa/Zihuatanejo

<sup>1</sup> We note that the blanket beyond-gateway code-share authority granted by this Notice is subject to the 30-day notice provision discussed in the body of this Notice. Thus, the carriers will be required to file such notice should the code-share partners decide to institute new code-share services in markets not listed here.

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#### **INTRA-U.S. CODE-SHARE SERVICES**

**INITIALLY PROPOSED MARKETS WHERE THE “MX” CODE WILL BE PLACED  
ON AMERICAN AND ITS AFFILIATES’ FLIGHTS BETWEEN MX/MX\***

**AUTHORIZED U.S. GATEWAYS AND:**<sup>2</sup>

Albuquerque Las Vegas Salt Lake City  
Atlanta Los Angeles San Antonio

Austin Miami San Diego  
 Baltimore Milwaukee San Francisco  
 Boston Minneapolis/St. Paul San Jose  
 Charlotte Nashville Seattle  
 Chicago (MDW) Newark St. Louis  
 Chicago (ORD) New Orleans Tampa  
 Cincinnati New York (JFK) Tucson  
 Cleveland New York (LGA) Washington, D.C. (DCA)  
 Columbus Oakland Washington, D.C. (IAD)  
 Dallas/Ft. Worth Omaha  
 Denver Ontario  
 Detroit Orlando  
 El Paso Philadelphia  
 Fresno Phoenix  
 Honolulu Pittsburgh  
 Houston Portland  
 Indianapolis Raleigh  
 Kansas City Sacramento

<sup>2</sup> We note that the blanket beyond-gateway code-share authority granted by this Notice is subject to the 30-day notice provision discussed in the body of this Notice. Thus, the carriers will be required to file such notice should the code-share partners decide to institute new code-share services in markets not listed here.

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### **THIRD-COUNTRY CODE-SHARE SERVICES**

#### **INITIALLY PROPOSED MARKETS WHERE THE “MX” CODE WILL BE PLACED ON AMERICAN AND ITS AFFILIATES’ FLIGHTS BETWEEN MX/MX\***

#### **AUTHORIZED U.S. GATEWAYS AND:<sup>3</sup>**

Tokyo, Japan Guayaquil, Ecuador Marsh Harbor, Bahamas  
 Brussels, Belgium Quito, Ecuador Montego Bay, Jamaica  
 Zurich, Switzerland Lima, Peru Nassau, Bahamas  
 Frankfurt, Germany Asuncion, Paraguay Nevis, Leeward Islands  
 Madrid, Spain Montevideo, Uruguay Point a Pitre, Guadeloupe  
 Paris, France Anguilla, West Indies Port au Prince, Haiti  
 London, United Kingdom (LGW) Antigua, West Indies Port of Spain, Trinidad  
 London, United Kingdom (LHR) Aruba, Aruba Providenciales, Turks & Caicos  
 Manchester, United Kingdom Barbados, Barbados Puerto Plata, Dominican  
 Republic  
 Rome, Italy Bermuda (Atlantic Ocean) Punta Cana, Dominican Republic

Calgary, Canada   Bonaire, Netherlands Antilles   Santiago, Dominican Republic  
Montreal Dorval, Canada   Canouan Island, Windward Islands   Santo Domingo,  
Dominican Rep.  
Toronto, Canada   Casa de Campo, Dominican Rep.   St. Kitts, Leeward Islands  
Vancouver, Canada   Curacao, Netherlands Antilles   St. Lucia, West Indies  
Buenos Aires, Argentina   Dominica, Dominica   St. Maarten, Netherlands Antilles  
La Paz, Bolivia   Freeport, Bahamas   Tortola, British Virgin Islands  
Santa Cruz, Bolivia   George Town, Bahamas  
Rio de Janeiro, Brazil   Grand Cayman Island, West Indies  
Sao Paulo, Brazil   Grenada, Windward Islands  
Santiago, Chile   Kingston, Jamaica

<sup>3</sup> We note that the blanket beyond-gateway code-share authority granted by this Notice is subject to the 30-day notice provision discussed in the body of this Notice. Thus, the carriers will be required to file such notice should the code-share partners decide to institute new code-share services in markets not listed here.

### **U.S. Carrier Standard Exemption Conditions**

In the conduct of the operations authorized, the U.S. carrier applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with all applicable requirements of the Federal Aviation Administration and with all applicable U.S. Government requirements concerning security. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the

public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.

8/2003

### **Foreign Carrier Standard Exemption Conditions**

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from

the United States in its homeland;

(9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;

(10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and

(11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.

8/2003